

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35420

LERAJJAREANRA O-KEL-LY,)	2009 Unpublished Opinion No. 418
)	
Petitioner-Appellant,)	Filed: April 8, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
MADISON COUNTY,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Respondent.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Madison County. Hon. Brent J. Moss, District Judge.

Appeal from order dismissing petition for writ of habeas corpus, dismissed.

Lerajjareanra O-Kel-ly, Boise, pro se appellant.

Troy D. Evans, Rexburg, for respondent.

PERRY, Judge

Lerajjareanra O-Kel-ly appeals from the district court's order dismissing his petition for writ of habeas corpus without an evidentiary hearing. For the reasons set forth below, we dismiss O-Kel-ly's appeal as moot.

While being transported to the Idaho Maximum Security Institution, O-Kel-ly spent a night in the Madison County jail. O-Kel-ly spent approximately nine hours at the county jail that evening and complained of migraine headaches which he alleged required special medication stored with his personal belongings. He claimed that the headaches were a result of degenerative disc disease and nerve damage in his neck. The jailers informed O-Kel-ly that the jail nurse had left for the evening and that there was nothing that they could do for him at that time. Seven months later, O-Kel-ly filed a petition for writ of habeas corpus alleging that the jailers' failure to provide him with his prescription pain medication violated his rights under the Constitutions of the United States and the State of Idaho. The district court dismissed O-Kel-ly's petition, reasoning that any constitutional deprivation suffered by O-Kel-ly was de minimis. O-Kel-ly appeals.

The decision to issue a writ of habeas corpus is a matter within the discretion of the court. *Johnson v. State*, 85 Idaho 123, 127, 376 P.2d 704, 706 (1962); *Brennan v. State*, 122 Idaho 911, 914, 841 P.2d 441, 444 (Ct. App. 1992). When we review an exercise of discretion in a habeas corpus proceeding, we conduct a three-tiered inquiry to determine whether the lower court rightly perceived the issue as one of discretion, acted within the boundaries of such discretion, and reached its decision by an exercise of reason. *Brennan*, 122 Idaho at 914, 841 P.2d at 444; *Sivak v. Ada County*, 115 Idaho 762, 763, 769 P.2d 1134, 1135 (Ct. App. 1989). If a petitioner is not entitled to relief on an application for a writ of habeas corpus, the decision by the petitioned court to dismiss the application without an evidentiary hearing will be upheld. *Brennan*, 122 Idaho at 917, 841 P.2d at 447.

O-Kel-ly argues that his claim is not de minimis because the jailers were deliberately indifferent to his serious medical need and, therefore, he contends that he was subjected to cruel and unusual punishment. The state responds that O-Kel-ly's claim is moot because he is no longer incarcerated at the county jail and it does not fall under any of the exceptions to the mootness doctrine. The district court did not address the issue of mootness. However, an appellate court may affirm a lower court's decision on a legal theory different from the one applied by that court. *Matter of Estate of Bagley*, 117 Idaho 1091, 1093, 793 P.2d 1263, 1265 (Ct. App. 1990).

An issue is moot if it presents no justiciable controversy and a judicial determination will have no practical effect upon the outcome of the case. *Comm. for Rational Predator Mgmt. v. Dep't of Agric.*, 129 Idaho 670, 672, 931 P.2d 1188, 1190 (1997); *Idaho Schs. for Equal. Educ. Opportunity v. Idaho St. Bd. of Educ.*, 128 Idaho 276, 281, 912 P.2d 644, 649 (1996); *Storm v. Spaulding*, 137 Idaho 145, 148, 44 P.3d 1200, 1203 (Ct. App. 2002); *Russell v. Fortney*, 111 Idaho 181, 182, 722 P.2d 490, 491 (Ct. App. 1986). Additionally, if the issues presented are no longer live and if the parties lack a legally cognizable interest in the outcome, those issues are not justiciable, but are moot and thereby review is ordinarily precluded. *Freeman v. Idaho Dep't of Corr.*, 138 Idaho 872, 875, 71 P.3d 471, 474 (Ct. App. 2003). A party lacks a legally cognizable interest in the outcome when even a favorable judicial decision would not result in relief. *Id.* In general, when the relief requested by a habeas corpus petitioner will not affect the current conditions of confinement, the case is moot and a court need not adjudicate the petition

on the merits. *Storm*, 137 Idaho at 148, 44 P.3d at 1203. Whether a case should be dismissed for mootness is a question of law, subject to free review. *Id.*

In this case, O-Kel-ly was temporarily incarcerated at the county jail while awaiting further transport and was only there for nine hours. At the time he filed his petition, over seven months had passed since the night in question. The conditions he complains of have long-since ended. He does not seek relief from an ongoing condition of confinement but, rather, seeks vindication from what he contends was an unfair refusal on the part of the county jailers to comb through his personal belongings and administer him pain medication without the supervision of the jail nurse on one night, seven months previously. O-Kel-ly does not present a live controversy, and any favorable judicial decision from this Court would not afford him any relief.

This Court has recognized three exceptions to the mootness doctrine. The first exception occurs when the challenged conduct persists in causing collateral legal consequences for challenger. *Freeman*, 138 Idaho at 875, 71 P.3d at 474. Second, an exception exists where the challenged conduct is likely to evade judicial review and thus is capable of repetition. *Id.* at 876, 71 P.3d at 475. Third, an exception applies where an otherwise moot issue raises concerns of substantial public interest. *Id.* None of these exceptions apply to this case. O-Kel-ly's petition for writ of habeas corpus is moot. Accordingly, his appeal is dismissed. No costs or attorney fees are awarded on appeal.

Chief Judge LANSING and Judge GUTIERREZ, **CONCUR.**